

## WALPOLE ZONING BOARD OF APPEALS MINUTES OF JANUARY 6, 2021

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom on WEDNESDAY, JANUARY 6, 2021 AT 7PM. The following members were present on the Zoom Webinar:

John Lee (Chair), Susanne Murphy (Vice-chair), Jane Coffey, Drew Delaney, Dave Anderson  
Ashley Clark (Community Development Director); George Pucci (KP Law); Amy Kwessel (KP Law)

### **Case No. 20-31, Alexander Ponomarenko, 2210 RTE.1, Special Permit Request:**

Lee opened the hearing and read an email that was submitted earlier in the day by the applicants representative, requesting to withdraw the application without prejudice. Murphy motioned to accept the applicants request to withdraw without prejudice, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

### **Case No. 20-35, Jeffrey Schnurr, 20 Winthrop Street, Variance Request:**

Lee opened the hearing, present was Jeffrey Schnurr, and explained to the board that he is seeking a variance for a 24x48 single-bay garage to be placed at the end of the driveway, where the edge of the house is located, with a setback of 4.83 feet, where a 15 ft. setback is required. Schnurr stated to the board that the reasoning for the placement of the garage is due to the location of the house on the property, along with the placement of the driveway and entrance to the house. Furthermore, Schnurr stated that there is no space on the other side of the house on the property to place the garage due to his future plans of putting an addition onto the house in that space. Lee asked what the specific hardship of the applicant was, in which Mr. Schnurr stated that he does not currently have a garage, and would like to construct one where the existing driveway is located. Lee read comments from other departments, which included comments from the Fire Dept. and Engineering. Lee read a letter submitted into the record from an abutter, voicing their opposition to the proposed garage addition, due to severely being within the setback, and the 2-story height of the structure that may adversely effect the character of the neighborhood and set a precedent. Murphy stated that according to the plans submitted at the public hearing, it is feasible to relocate the proposed garage to the Dudley St. side of the house. Mr. Schnurr stated that it was not a viable option, due to wanting to use that piece of the property as their backyard, and it would not work with the location of the existing driveway. Mr. Schnurr then stated that a structure could go on the Dudley St. side of the home, however, it is being used in the future for a potential sunroom addition. Anderson asked what the height of the proposed garage is, in which Mr. Schnurr stated it's a 2-story, totaling 26.6 ft. Coffey stated that the surrounding neighborhood has garages that consist of one story, and that a 2-story garage in height would alter the characteristics of the neighborhood. Lee opened the hearing to the public, which there was none. At the request of the applicant, Murphy motioned to close the hearing, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0. Murphy motioned to grant the variance on behalf of the applicant to construct the garage with a setback of 4.83 ft., seconded by Coffey, roll call vote: Lee-no, Coffey-aye, Murphy-no; Delaney-no; Anderson-no. Coffey stated to the Chair that she mistakenly said "aye", in which Lee stated that there is no need reconsider, however, for the record, the vote is 1-4-0. Therefore, the motion did not carry, and the applicants request for variance was denied.

### **Case No. 03-20, 55 SS LLC., 51-53-55 Summer Street, Comprehensive Permit:**

Lee opened the hearing, present was David Hale, Leslie French, Patrick Bogle, Kenneth Cram, Katie Enright, Jeremy Baldwin, Mark Brooks and Phil Macchi. Hale stated that he has made significant changes to the plan and on the off-site triangle intersection. Katie Enright of Howard Stein Hudson stated that the following changes were made to the plan on site;

1. An easement was acquired from 87 Summer St. to enable a second emergency access point (fire & police only) and also to serve as the area that loops the water (utilities). Gated at both ends (cul de sac and at Summer St.)
2. reconfigured entrance to the project by removing the Blvd. proposed in the road along Roadway A to help meet the fire criteria of having 2 ways of travel
3. shrank the pavement to 26 ft. in width; opened up the radii in the beginning of the project to allow ease of fire truck movement
4. one-way thru bldgs.. 1-5 to allow cars to be able to come in, and pass the units, and loop around
5. Roadway B relayed out, consolidated the 3 bldgs. into 2 bldgs., with 6 units in each structure, with short driveways that only access the 12 units, with the driveway itself to be less than 150 ft. long
6. reduced pavement from 26 ft. to 24 ft. in width at the first wetland crossing
7. all intersections have been upgraded w. increases in radii and width to ensure a clear path of travel for emergency vehicles
8. multi-family bldgs.: reconfigured parking at both multi-family bldgs. to allow for clear area for handicap parking spaces/ passage/ visibility.
9. L-shaped Bldg.: proposed stairwell down to a door located at garage level (doors to open an 180 degrees), to allow fire personnel in the event something was blocking garage door access (emergency access only). Provide staging area adjacent to stairwell to allow for ambulance/ emergency vehicle/ equipment to be staged in area.
10. Linear Bldg.: access way with two front doors on building to enter garage, along with staging area to aid fire and emergency personnel. Willing to provide a covered stairwell if desired by the Fire Dept. in order to keep rainwater from pooling in stairwell\*
11. 2 cul de sacs btwn. Single-family homes: smaller islands proposed, to allow wider paved area around island, NO PARKING signs to be placed to ensure fire access in an emergency

Enright stated the applicant is exploring options with the Fire Dept. regarding the addition visitor parking.

Kenneth Cram of Bayside Engineering stated the following changes were made off-site;

Cram stated that he provided a series of plans to help develop and improve the triangle intersection, and provide them to Tetra Tech for review. A few ideas were submitted, which included;

1. one-way triangular shaped roundabout. This option still produces long vehicle queuing.
2. roundabout providing level of service of C. This option yields operational issues due to multiple driveways that would be significantly impacted.
3. reconfiguration with a signal, providing a level of service of B, with manageable queuing, and having pedestrian crossings be an activated system. This option creates a sizeable area of greenspace.

Cram stated that option #3 is what he would recommend, and Reardon stated that after meeting with various department heads, it was unanimous that option #3 for the reconfiguration with the signal was the most ideal for the area.

Clark stated that the goal of tonight is to hear feedback from the board relating to the plan changes and to hear from the public. Clark also noted that the off-site plans are sketches that do not depict the final submission.

Murphy stated that she did not see visitor parking spaces next to the townhouses. Enright stated that each townhome has a garage and a driveway, and she will continue to work with the Fire Dept., Cliff & Sean in order to potentially add additional parallel visitor parking without significantly increasing impervious area. Lee agreed that he shares concerns about the lack of additional parking spaces. Murphy asked about how the mail is going to be handled, in which Mr. Hale stated that there will be two mail areas; one on the right of the front entrance, which will service the rental townhomes, and one will service the ownership. Hale stated that each multi-family building will have mail delivered to itself and include a package room, the clubhouse will also include a package room. Lee asked Mr. Cram what his thoughts were on having sidewalks on both sides of Summer St., in which Mr. Cram stated that it would be more beneficial to have a sidewalk along the east side of Summer St. due to the survey that was

previously done relating to newly built homes, and fire hydrants that would force the sidewalk to drag if placed on the west side of Summer St. Reardon agreed that one side of Summer St. with a sidewalk would be the safer option due to limiting one side of the street where pedestrians could walk. Rick Mattson of the S&W Dept. stated that the revised water looping situation is far better than what was originally proposed, however, he stated that it would be better if the water main ideally went under the train tracks over to Neponset St. Mr. Abbott also echoed Mr. Mattsons statements.

Lee opened the hearing up to the public for comment, which included the following;

Erica Burdon 1950 Washington St.: unsafe proposed intersection; project too large for site

Bill Hamilton: concerns re: safety of 2<sup>nd</sup> emergency exit; not enough parking; disruption of water supply; water demand

Rosemarie Pileski of Eldor Dr.: concern over traffic; neighboring preschool; parking spaces in front of preschool; placement of crosswalk

Kait Fargo: concern over placement of crosswalk; placement of second emergency access point

JoAnne Mulligan: concerns over crosswalk / sidewalk placement at entrance of project site; traffic light is uncharacteristic of neighborhood; size of project too large for location

Maura Clow: question over the need for so many units within the town; inadequate drainage concerns; greenspace maintenance; inadequate parking

Becky Litvak: concern over queuing of triangle intersection; concern about getting in/out of driveway due to traffic; safety concerns re: density, loitering, litter

Fergal Gildea: concern over parking spaces and increase in traffic

Mark Major of Summer St.: project too large, would like decrease in size of project; traffic concern; safety concern for children

Julie Lowre: concern on projects impact on traffic; soil & water contamination; S&W concerns

John & Chrissa Kaselis of Lacivita Dr. (formerly Washington St.): concern over traffic; project size; safety at intersection and sidewalks

Rosemarie Pileski: encourages soil and water testing on site re: contamination

Clark stated that Mr. Hale needs to provide a set of plans on record that provides all of the revisions to the town, and have peer review look the changes over, and therefore recommends that the hearing be continued to mid-February. Clark recommended that a work session take place between now and the next public hearing to ensure that the revisions to the plans are acceptable to the Fire Dept. Murphy motioned to continue the hearing to 2/10/21 at 7PM via zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

**Case No. 20-21, Wall Street Development Corp, 48 Burns Avenue (Parcel 20-136)/ Union Street (Parcel 20-119)/ Brook Lane (Parcel 20-115/ Burns Avenue (Parcel 20-137), Request for Project Change/ Amendment to a Comprehensive Permit:**

Lee opened the hearing, present was Lou Petrozzi of Wall Street Development. Lee stated that at a previous hearing, the board voted to choose Tetra Tech to peer review the project, and requested that the applicant provide \$15,000.00 in funds to the ZBA within a 7 day period. Lee also stated that the applicant refused to accept Tetra Tech as the peer review for the project, and appealed this motion to the Select Board, which disagreed to the appeal. Clark stated a summary of the events that have taken place between 11/18/20 and the present time, which included the following;

11/18/2020: The hearing for the project modification for Burns Avenue is opened. Mr. Petrozzi presented the proposal to the Board. Staff presented the Board with an overlay of the site plans demonstrating that the changes made are not only substantial but are not limited to one area of the proposal. Staff noted that all buildings from the original proposal have been moved, enlarged and modified and also greatly reduce

setbacks and create an entirely new access into the site. The Board then discussed requesting scopes for peer review. Upon the request of Mr. Petrozzi, the Board agreed to solicit scopes from Tetra Tech and BETA. The hearing was continued to 11/30/20. 11/19/2020: Scopes of work were requested from BETA and Tetra Tech for peer review. 11/24/2020: Tetra Tech provided a scope of work with an estimate of \$13,624. 11/30/2020: A scope of work was provided from BETA the afternoon of the continued hearing with an estimate of \$7,500. The ZBA discussed the scopes of work provided. Members were amenable to tabling the vote on the design peer review due to objections from Mr. Petrozzi and hoped an agreeable scope could be worked out. Staff noted that while the BETA proposal estimate was less than Tetra Tech's scope, during the previous review BETA required additional funds during the review process. Mr. Petrozzi opined that the Board should use BETA again as they did the last review. Mr. Petrozzi stated that it is not about the money, but that BETA has familiarity with the site. The ZBA discussed Mr. Petrozzi's objection. The Board discussed how the changes were major and noted that the new connection on Union Street near the river was not in the scope last JAMES A. JOHNSON Town Administrator ASHLEY CLARK Community Development Director time and would be a new review, no matter who was the peer reviewer. Ms. Murphy noted that she would prefer to use Tetra Tech due to the technical acumen demonstrated during the review on a different 40B proposal. Ms. Coffey concurred and noted that it would be beneficial to the review to have a fresh set of eyes review the project. Mr. Petrozzi stated that he would return to the HAC and "deal with it there" and stated that BETA is familiar with the site and their office is around the corner. He opined that in his opinion, Tetra Tech is not in a position to review the proposal as efficiently as BETA. Upon inquiry from Chair Lee, Mr. Petrozzi stated that he would not pay for the peer review of Tetra Tech, noted that he objects and will seek recourse. Having deliberated on the matter and finding the Tetra Tech review preferable for a number of reasons, the Board then voted to accept peer review proposals from Tetra Tech for \$13,624.00 and noted their Comprehensive Rules and Regulations provide that funds shall be submitted within seven days. 12/7/2020: A letter dated 12/3/2020 was submitted by Wall Street Development's Attorney objecting to the ZBA's approval of the scope of work by Tetra Tech. Staff disputes the assertion in the letter that states that the work will be duplicative. Staff reiterates that the entire site has been redesigned - including the size, number, locations of buildings not to mention the addition of a new access road from an existing cul-de-sac. Due to the scale and number of changes the entire site warrants review as there are significant implications for the stormwater, drainage, circulation, etc. The changes cannot be isolated to one specific area of the project. 12/10/2020 Pursuant to 760 CMR 56.05(5)(d), Wall Street Development submitted an appeal of the peer review selection to the Walpole Board of Selectmen. 12/22/2020: Finding no conflict of interest or that Tetra Tech was an unqualified consultant, the Walpole Board of Selectmen voted to deny Wall Street Development's request to overturn ZBA's vote to use Tetra Tech as a peer reviewer. 12/23/2020: The Board of Selectmen sent a letter notifying Wall Street Development of the Board's vote. 12/28/20: Wall Street Development sent a letter to the ZBA outlining the reasons why a check in the amount of \$15,000 was being provided to the ZBA for BETA and not Tetra Tech to review the project. The letter selectively quotes Town Counsel's response to questions from the Board of Selectmen at their meeting on 12/22/2020. The letter omits any discussion of the other reasons the ZBA cited for preferring to have Tetra Tech be the peer reviewer. Staff would like to take the opportunity to clarify that when BETA's previous scope was brought up at the ZBA hearing on 11/30/2020, it was merely meant to demonstrate that while there was a disparity in estimations, some consideration should be given to the Board's previous experience where the initial quote from BETA was in fact not sufficient to cover the review. Additionally, the 12/7/2020 letter from Attorney Tallerman quotes from 760 CMR 56.05(5)(a) as follows: Whenever possible it shall work cooperatively with the Applicant to identify appropriate consultants and scopes of work and to negotiate payment of part or all of the consultant fees by the Applicant. ... The Board should not impose unreasonable or unnecessary time or cost burdens on an Applicant. The letter stops there and leaves out the next sentence of 760 CMR 56.05(5)(a) that states: Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable review fee in

accordance with 760 CMR 56.05(b) for the employment of outside consultants chosen by the Board alone. Given that: the scope of work for Tetra Tech is from a qualified nationally known firm, there are no conflicts of interest, the scope of work is reasonable given the substantial changes to the proposed project, and Wall Street Development has provided the Board with a check in excess of the funds requested by Tetra Tech, the scope is not unreasonable or adding unnecessary time or cost on the Applicant. Wall Street Development themselves have inflicted a considerable loss of time in delaying the provision of the requested funds. Additionally, the Board may have been amenable to requesting a reduced fee for the peer review, however, Wall Street Development stated at the hearing that money was not the objection. Furthermore, the 12/7 letter refers to the scope as an “exorbitant sum”, meanwhile Wall Street Development provided a check in the amount of \$15,000 for BETA’s review. 1/6/2021: More than 14 days have elapsed from the Board of Selectmen’s vote to deny the appeal of peer review selection, well in excess of the seven days deadline prescribed in the ZBA’s Comprehensive Regulations to provide peer review funds. To date, 37 days after the ZBA voted to approve Tetra Tech scope of work, the Applicant has not provided the requested peer review funds for the selected peer reviewer, in the amount of \$13624.00.

Lee asked Mr. Petrozzi if he has a check for the Tetra Tech peer review, in which Mr. Petrozzi stated that he is going to stick with his decision to have the original peer reviewer (BETA) review the project. Mr. Petrozzi then stated that if that is not acceptable to the board, then we can just assume have the housing appeals committee adjudicate the decision. Lee asked Mr. Pucci what his take was on this situation with respect to the town and the Zoning Board, in which Mr. Pucci stated that at this point in time, if the applicant does not want to agree to a peer reviewer that you’ve selected, the board can continue with two options, including the following;

1. the board to reconsider their selection of Tetra Tech to peer review the project, and go with the applicants preference (BETA) that he has stated is the company he will only fund the this projects peer review, and not agree to the use of Tetra Tech
2. the board can close the hearing and schedule deliberations for a denial decision based on the applicants failure to fund the selected peer reviewer of Tetra Tech.

Pucci noted that Clarks reiteration of events was accurate, and that there was an administrative appeal of the boards selection which the applicant was entitled to do under the comprehensive permit regulations of the DHCD.

Lee asked the board if any of the members want to reconsider the selection of Tetra Tech and use Beta, in which no one expressed their want to reconsider. Fitzgerald stated that he thinks its fully within the purview of the board to choose which technical consultant is going to provide advice to the board, to select that entity and agree on a reasonable scope of work, and the board cannot be in a position where the applicant is dictating to the board who the board chooses in the process, which in his opinion is not workable, and takes away the authority of the board to make that selection, since they are supposed to be an independent reviewer working for the benefit of the board, and is therefore not inclined to reconsider the boards decision to hire Tetra Tech as the peer reviewer. Fitzgerald stated that its reasonable given the experience with Tetra Tech, that they’re capable and have been very efficient and timely with their responses in previous projects, and in light of the findings of the board of selectmen that there are no conflicts of interest, he sees no reason for the board to reconsider. Coffey echoed Fitzgerald, and stated that the board has made a good faith effort to work with the applicant. Delaney stated that the changes to the project are substantial and the board has agreed that it needs to be reviewed entirely. Delaney stated that relating to the opinion of the prior peer reviewer and trying to apply that to the current revised project is not adequate for the boards decision making on moving forward, and that he is not inclined to reconsider the choice of peer reviewer. Pucci stated that the board has acted timely on the notice of project change, and found a substantial change that warranted a public hearing. Pucci stated that the boards finding that the changes were substantial was consistent with Mass Housing finding, and the board then made a timely selection of a peer reviewer, and considered the applicants objections to that selection. Pucci stated that the applicant has not raised any objections about qualification or conflict of interest of the Tetra Tech, and it was within the boards discretionary authority the selection of Tetra Tech. Pucci stated that he is reluctant to advise the board to close the hearing on a non-substantive basis and proceed with a denial based on the failure to fund the peer review, however, it is the

outcome that is being dictated to the board by the applicant, and therefore recommends procedurally that the board entertain a vote to close the public hearing since there is nothing substantive to discuss on the application unless and until the peer review is funded. Pucci stated that there is no reason to continue the public hearing any further. Pucci stated that after the board entertains a vote to close the public hearing, that the board then schedule a next date and time certain for deliberations and receive a draft denial decision based on the peer review issue for the board to then deliberate on. Pucci stated that the board has forty days to render a decision from the date of the close of the public hearing. Murphy motioned to close the public hearing on case No. 20-21, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0. Murphy motioned to schedule deliberations and have a draft denial decision submitted to the board to deliberate on for 1/27/21 at 7PM via zoom, seconded by Coffey, roll call vote: Lee-aye, Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Minutes: Murphy motioned to approve the minutes of 12/16/20, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Murphy motioned to adjourn, seconded by Coffey, roll call vote: Lee-aye, Fitzgerald-aye, Coffey-aye; Murphy-aye, Delaney-aye, the motion carried 6-0-0.

**The meeting adjourned at 10:20 PM**

accepted 2/11/21